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Federal Communications Commission

DA 97-984

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-54
Table of Allotments,	)	RM-8769
FM Broadcast Stations.	)	RM-8809
(Ruidoso and Cloudcroft, New Mexico) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 7, 1997

Released: May 16, 1997

By the Chief, Allocations Branch:

1. At the request of Kellie K. Brown ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 3555 (1996), proposing the allotment of Channel 268A to Ruidoso, New Mexico, as the community's third aural and second local FM service. Comments were filed by the petitioner and Norbert Fritz ("Fritz"). A counterproposal was filed by MTD, Inc. ("MTD"), requesting the allotment of Channel 268C to Cloudcroft, New Mexico.<sup>2</sup> Reply comments were filed by the petitioner and MTD.

2. The petitioner and Fritz each state their intention to apply for Channel 268A, if allotted to Ruidoso. MTD counterproposes that Channel 268C be allotted to Cloudcroft, as the community's first local aural broadcast service, and commits to applying for the channel, if allotted.<sup>3</sup> MTD states that Cloudcroft is an incorporated community with a 1990 U.S. Census population of 636 people. It points out that the community has its own zip code, local police, elementary and high school and Chamber of Commerce. In addition, MTD notes that Cloudcroft has a number of local businesses which incorporate the town name, such as, Cloudcroft Auto Parts, Cloudcroft Concrete & Materials, Cloudcroft Plumbing, Cloudcroft Realty and Cloudcroft Wrecker. Using the allotment priorities set forth in Revision of FM Policies and Procedures, MTD states that Cloudcroft is the more deserving proposal because it would further the third priority by providing the community with its first local service, rather than serving the fourth

<sup>1</sup> The community of Cloudcroft has been added to the caption.

<sup>2</sup> Public Notice of the filing of the counterproposal was given on May 21, 1996, Report No. 2132.

<sup>3</sup> After the record closed, Dr. Thomas Kerley filed a petition for rule making also requesting the allotment of Channel 268C to Cloudcroft. Because the petition was not received during the initial comment period, his pleading has not been accepted as comments in support of the allotment. However, in light of our action allotting a channel to Cloudcroft, he may, of course, apply for a construction permit for use of the channel.

priority, other public interest matters.<sup>4</sup> In addition, it states that the allotment of Channel 268C to Cloudcroft would provide 1.0 mV/m service to 67,321 persons within a 25,284 square kilometer area as compared to Channel 268A at Ruidoso which would provide a new service to only 11,06 persons within a 3,109 square kilometer area. MTD states that Channel 268C can be allotted to Cloudcroft in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. According to MTD, Cloudcroft is located within the boundaries of the Lincoln National Forest. While it states that there is privately held property in and around the Cloudcroft area, MTD identifies a U.S. Forest Service electronics site, the Wofford Electronic Site (coordinates 32-59-15 North Latitude; 105-42-40 West Longitude), where Channel 268C could be used.

3. In reply comments, petitioner states that channel allotments can be made to both communities if Channel 240C, instead of Channel 268C, is allotted to Cloudcroft. Further, petitioner states that Channel 240C can be used at the Wofford Electronic Site identified by MTD. MTD, in response, requests that Channel 244C be allotted to Cloudcroft, if a channel other than 268C is allotted. It states that the use of the Wofford electronics site was merely a hypothetical reference site, but it actually intends to locate the Cloudcroft antenna at the Buck Mountain electronics site. MTD, in response, that Channel 244C can be used at the Buck Mountain site utilizing the contour protection provisions of Section 73.215 of the Commission's Rules. However, it states Channel 240C cannot be utilized at the Buck Mountain site because the short-spacing to Station KSSR-FM, Channel 240A, Santa Rosa, New Mexico, is so severe that the contour protection provisions of Section 73.215 could not be used. Therefore, it requests that either Channel 268C or Channel 244C be allotted to Cloudcroft and either Channel 268A or Channel 240A be allotted to Ruidoso.<sup>5</sup>

4. Based on the record before us, we believe that both communities are deserving of an FM channel allotment. Further, a comparison of the two communities is not necessary since an alternate channel is available for allotment to Cloudcroft. Therefore, we will allot Channel 268A to Ruidoso and Channel 244C to Cloudcroft. Generally, where more than one channel has been proposed for allotment to a community that will be available for application, the Commission allots the channel which requires the least site restriction. See Chico, California, 6 FCC Rcd 4294 (1991) and Stuart and Boone, Iowa, 5 FCC Rcd 4537 (1990), recon. denied, 6 FCC Rcd 6036 (1991). Here, Cloudcroft is located within the boundaries of a national forest, thus restricting the area where a transmitter may be erected. Therefore, although Channel 244C

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<sup>4</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See 90 FCC 2d 88 at 101 (1982).

<sup>5</sup> Petitioner filed a response to MTD's reply comments. The Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment periods set forth in the Notice of Proposed Rule Making and the response period set forth in the Public Notice announcing the filing of a counterproposal. Petitioner's response does not provide us with information of decisional significance. Therefore, in conformance with Commission policy, we will not accept the unauthorized pleading.

requires a greater site restriction than Channel 240C, we will allot the channel based on MTD's stated intention to apply for the channel. Channel 244C can be allotted to Cloudcroft at coordinates which comply with all applicable spacing requirements and it is expected that MTD, and any other interested parties, will submit an application which meets the Commission's spacing requirements. Any use by applicants of the provisions of Section 73.215 to meet the required mileage separations will be considered in the context of the individual application.

5. Channel 268A can be allotted to Ruidoso in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Channel 244C can be allotted to Cloudcroft with a site restriction of 59.9 kilometers (31.6 miles) north to avoid a short-spacing to the proposed allotments of Channel 245C at El Porvenir, Chihuahua, and Channel 245B, Las Palomas, Chihuahua, Mexico.<sup>6</sup> Mexican concurrence in these allotments has been received since both Ruidoso and Cloudcroft are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 30, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Cloudcroft, New Mexico	244C
Ruidoso, New Mexico	228C3, 268A

7. The window period for filing applications for Channel 244C at Cloudcroft and Channel 268A at Ruidoso will open on June 30, 1997, and close on July 31, 1997.

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<sup>6</sup> The coordinates for Channel 268A at Ruidoso are 33-20-00 North Latitude and 105-40-54 West Longitude. The coordinates for Channel 244C at Cloudcroft 33-24-14; 105-46-56.